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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

20 JIPC MANAGEMENT, INC.,
21 Plaintiff,
22 v.
23 INCREDIBLE PIZZA CO., INC.;
24 INCREDIBLE PIZZA FRANCHISE
25 GROUP, LLC; CJM RACING, LLC,
26 Defendants.

Case No. CV08-4310 MMM (PLAx)

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION IN
LIMINE NO. 5 RE: ALLEGED
HARM OR DAMAGES PRIOR
TO PLAINTIFF'S CLAIMS**

Hon. Margaret M. Morrow

Date: July 13, 2009
Time: 9:00 a.m.
Ctrm: Roybal 780

1 Plaintiff JIPC Management, Inc. (“JIPC”) submits this Opposition to
2 Defendants’ Motion in Limine No. 5 (“MIL No. 5”) Re: Alleged Harm or
3 Damages Prior to Plaintiff’s Claims.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 In this motion, Defendants seeks an order precluding Plaintiff from offering
6 any evidence to the effect that it suffered any harm or damages as a result of any
7 action taken or services offered by Defendant prior to the events that gave rise to
8 this lawsuit. Depending on what evidence is offered by Defendants, it is Plaintiff’s
9 current intention to seek only damages and injunctive relief related to Defendants’
10 activities directed to California and adjoining states. (*See Order Granting in Part*
11 *and Denying in Part Defendants’ Motion for Summary Judgment*, Doc. 188, at 27
12 (“a reasonable jury could infer that as of the date the complaint was filed, JIPC’s
13 market penetration extended to the states surrounding California”). It is also
14 Plaintiff’s current intention to seek damages only from March 1, 2008 through
15 trial.¹

16 What Defendants are really after is a bar against offering the undisputed
17 evidence that Rick Barsness intentionally adopted a mark and name virtually
18 identical to Plaintiff’s and that he knew that name would likely cause confusion and
19 harm to Plaintiff should the businesses operate in the same or proximate geographic
20 markets. Defendants argue that Mr. Barsness’s intentions and knowledge prior to
21 his decision to enter into business activities geographically proximate to Plaintiff
22 are irrelevant. Mr. Barsness’s conduct in adopting and using the marks “[____]
23 Incredible Pizza Company” for a restaurant concept virtually identical to those
24 marked “John’s Incredible Pizza Company” is highly relevant and admissible.

25 _____
26 ¹ Defendants assert that Plaintiff should be precluded from seeking damages
27 prior to April 1, 2008, the day after Defendants entered into a formal sponsorship
28 agreement with CJM Racing. However, the undisputed record demonstrates that
prior to entering a formal agreement, Defendants sponsored CJM in four races that
occurred in March 2008 and were broadcast nationwide, including a March 1, 2008
race held at Las Vegas Motor Speedway.

1 The fact that damages may be limited proximately and temporally does not
2 mean that evidence going to liability should be so limited. In the Ninth Circuit, a
3 defendant's knowing adoption of a mark similar to the plaintiff's raises a
4 presumption of confusion. *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348 (9th
5 Cir. 1979). If Defendants' position is adopted, people like Mr. Barsness will have
6 license to adopt others' trademarks, use them in regions of the country for a short
7 time, and then enter into the senior user's geographic territories and avoid the legal
8 presumptions associated with intentional adoption of an identical or similar mark.

9 Defendants' motion should be denied.

10 DATED: June 29, 2009

STOEL RIVES LLP

11 By:/s/Steven E. Klein

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